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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/052,325	03/31/1998	JOHN E. STOCKENBERG	EMC-97-137	9015

7590 01/31/2003

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EXAMINER

COLBERT, ELLA

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 01/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/052,325

Applicant(s)

STOCKENBERG ET AL.

Examiner

Ella Colbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 26 November 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-16 are pending. Claims 1, 6-13, and 15 have been amended in this communication filed 11/26/02 entered as Amendment C, paper no. 16.
2. The Associate Power of Attorney filed 11/16/02 has been entered as paper no. 14.
3. The Extension of Time filed 11/26/02 has been entered as paper no. 15.
4. The Specification objection has been overcome by Applicants' amendment to the Specification and is hereby withdrawn.
5. The Drawing Objections have been overcome by Applicants' Amendment to the drawings and are hereby withdrawn. Applicants' drawings have been reviewed and approved by the Examiner and Draftsperson (see "Notice of Draftsperson's Patent Drawing Review" attached to this Office Action, paper no. 17).
6. The 35 U.S.C. 112 First Paragraph Rejection has been overcome by Applicants' amendment to claims 8, 10, 12, 13 and 15 and is hereby withdrawn.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
8. Applicants' amended claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 13 recites "dynamically, wherein ...". It is not understood what Applicants' mean is "dynamically". Do Applicants' mean "dynamically creating a fourth pair of communication mechanisms, wherein ..."?

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,889,943) Ji et al, hereafter Ji in view of (US 5,862,322) Anglin et al, hereafter Anglin.

With respect to claim 1, Ji teaches, at least one first communication mechanism residing on both the first and second computers for facilitating communications between the first and second processes over the network (col. 1, lines 27-49, col. 5, lines 26-46, and fig. 2); a second communication mechanism residing on both the first and second computers for facilitating communication between the first and second processes through the data storage system (col. 1, lines 50-61). Ji did not teach, means within the first and second processes for allowing the first and second processes to determine whether a communication from the first and second processes is from first or second communication mechanism, wherein, in response to determining if a communication is from said first communication mechanism then communicating over said network and in response to determining if a communication is from said first communication mechanism then communicating through said data storage system. Anglin discloses, means within the first and second processes for allowing the first and second processes to determine whether a communication from the first and second processes is from the first or second communication mechanism, wherein, in response to determining if a

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communication is from said first communication mechanism then communicating over said network and in response to determining if a communication is from said first communication mechanism then communicating through said data storage system (col. 6, lines 60-66, col. 35, lines 47-67 and col. 36, lines 1-8 and lines 28-46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a means within the first and second processes for allowing the first and second processes to determine whether a communication from the first and second processes is from the first or second communication mechanism, wherein, in response to determining if a communication is from said first communication mechanism then communicating over said network and in response to determining if a communication is from said first communication mechanism then communicating through said data storage system and to combine Ji's at least one first communication mechanism residing on both the first and second computers for facilitating communications between the first and second processes over the network and a second communication mechanism residing on both the first and second computers for facilitating communication between the first and second processes through the data storage system with Anglin's means within the first and second processes for allowing the first and second processes to determine whether a communication from the first and second processes is from the first or second communication mechanism, wherein, in response to determining if a communication is from said first communication mechanism then communicating over said network and in response to determining if a communication is from said first communication mechanism then communicating through said data

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storage system and to modify in Ji because such a modification would allow Ji to have a communication interface linked to the communication interface of the first and second computer system for facilitating processes over a network.

With respect to claim 2, Ji teaches, the first and second processes are part of a backup or restore process (col. 10, lines 21-55). Anglin discloses, the first and second processes are part of a backup or restore process (col. 11, lines 48-55 and col. 28, lines 45-47). Together Ji and Anglin teach the claim limitations of claim 2.

With respect to claim 3, Ji teaches, at least one first communication mechanism is a network socket (col. 6, lines 28-31 and col. 8, lines 36-44). Network communications and socket calls used over the network are well known to anyone skilled in the art, as described in Applicants' Specification on page 18.

With respect to claim 4, Ji teaches, the second communication mechanism is a data storage system socket (col. 8, lines 46-58).

With respect to claim 5, Ji teaches, the backup and restore operations are capable of backing up and restoring information from a file system (col. 20, lines 10-29). Anglin discloses, the backup and restore operations are capable of backing up and restoring information from a database application (col. 10, lines 54-64). Together Ji and Anglin teach the claim limitations of claim 5.

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With respect to claim 6, Ji teaches, (a) establishing at least one first connection over a network between first and second processes residing on different computers, wherein, in response to determining if a communication is from the first communication mechanism then communicating over the network and in response to determining if a communication is from the first communication mechanism then communicating through the data storage system (col. 8, lines 18-24 and lines 53-58). Ji did not teach, (b) establishing in parallel with at least one first connection a second connection through a data storage system between the first and the second processes, wherein the second connection is configured to be responsively used for communication over the data storage system. Anglin discloses, (b) establishing in parallel with at least one first connection a second connection through a data storage system between the first and the second processes, wherein the second connection is configured to be responsively used for communication over the data storage system (col. 10, lines 54-64 and col. 11, lines 48-55). It would have been obvious to one having ordinary skill in the art at the time the invention was made to establish in parallel with at least one first connection a second connection through a data storage system between the first and the second processes, wherein the second connection is configured to be responsively used for communication over the data storage system and to combine Ji's establishing at least one first connection over a network between first and second processes residing on different computers

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with Anglin's establishing in parallel with at least one first connection a second connection through a data storage system between the first and the second processes, wherein the second connection is configured to be responsively used for communication over the data storage system because such a modification in Ji would allow Ji to connect to a client and then to a server where the data is stored on a network.

With respect to claim 7, Ji teaches, creating a first pair of communication mechanisms on a designated port, wherein the first pair includes a first communication mechanism and a second communication mechanism (col. 11, lines 14-53).

With respect to claim 8, Ji teaches, requesting the first communication mechanism pair a connection to the second communication mechanism pair (col. 10, lines 6-29) and in response to the connection request, accepting the connection request (col. 10, 31-34 and lines 49-55).

This dependent claim is also rejected for the similar rationale as claim 7.

With respect to claim 9, Ji teaches, creating a second pair of communication mechanisms on the designated port, wherein the second pair includes a first communication mechanism and a second communication mechanism and wherein the second pair of communication mechanisms is used for transferring a different type of information than would be transferred over the first pair of communication mechanisms (col. 10, lines 54-55 and col. 11, lines 4-53).

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This dependent claim is also rejected for the similar rationale given for claim 7.

With respect to claim 10, Ji teaches, requesting with the first communication mechanism of the second pair of communication mechanisms, a connection to the second communication mechanism of the second pair of communication mechanisms (col. 12, lines 1-17).

This dependent claim is rejected for the similar rationale given for claim 8.

With respect to claim 11, Ji teaches, creating a third pair of communication mechanisms on a second designated port, wherein the third pair includes a first communication mechanism and a second communication mechanism (col. 8, lines 59-67 and col. 9, lines 1-67).

With respect to claim 12, Ji teaches, requesting the first communication mechanism of the third pair of communications mechanisms a connection to the second pair of communications mechanisms (col. 8, lines 18-54).

This dependent claim is rejected for the similar rationale given for claims 8, 10, and 11.

With respect to claim 13, Ji teaches, receiving information about a group of resources in the data storage system (col. 5, lines 28-46); in response to receiving information about the group of resources, creating a fourth pair of communication mechanisms on a dynamically, wherein the fourth pair includes a first communication mechanism and a second

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communication mechanism (col. 9, lines 51-67); and connecting the first communication mechanism and the second communication mechanism of the fourth pair of communication mechanisms to each other through the data storage system (col. 10, lines 18-31 and lines 49-55).

With respect to claim 14, this dependent claim is rejected for the similar rationale given for claim 1.

With respect to claim 15, Ji teaches, identifying resources on a data storage device to be used in order to transfer information through the data storage device (col. 5, lines 26-43).

This claim is also rejected for the similar rationale given for claims 6 and 13.

With respect to claim 16, this dependent claim is rejected for the similar rationale given to claims 1 and 5.

Response to Arguments

12. Applicant's arguments filed 11/26/02 have been fully considered but they are not persuasive.

1. Applicants' argue: Regarding the rejection under 103 for unpatentability for obviousness of pending Claims 1-16, Applicants' refer to the long established three basic criteria for obviousness that must be met if an obviousness rejection is to have proper merit has been considered but is not persuasive based on based on the motivation need not be expressed in a reference used to show obviousness. It is assumed that which is not taught in the reference relies to some extent on the knowledge of persons skilled in the art to complement that which is known and the

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skilled artisan is presumed to know something more about the art than only what is disclosed in the applied reference.

Sources of Rationale Supporting a Rejection under 35 U.S.C. 103: Rationale may be in a reference, or reasoned from common knowledge in the art, scientific principles, art-recognized equivalents, or legal precedent. See MPEP 2144.

2. Applicants' argument: Neither Ji et al. nor Anglin are directed to a data storage system environment, nor does either provide the claimed advantages for a backup and restore operation. A backup and restore operation has been considered but is not persuasive because it is not interpreted that Applicants' claim limitations suggest or disclose a backup and restore operation. The recitation "... backup or restore operations, ..." has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hira*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Ji teaches a "data storage system" in col. 5, lines 26-46 and fig. 2.

3. Applicants' argument: Claims 6 and 15 specify a method for assisting with backup and restore operations in a computer system, claim 6 specifies a method of establishing at least one first connection over a network, between first and second processes residing on different computers, wherein said first connection is configured to be responsively used for communication over a network; and establishing, in parallel

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with establishing said at least one first connection, a second connection, through a data storage system, between said first and said second processes, wherein said second connection is configured to be responsively used for communication over said data storage system and claim 15 specifies receiving information about a dynamically created communication mechanism over the established connection and establishing a second connection over the network, on the dynamically communication mechanism, between said first and second processes for advantages of efficiency of the backup and restore operation. Neither of these important limitations discussed above with reference to claims 1, 6, and 15 are taught or suggested by either Ji et al or Anglin et al or by combining these two prior art references has been considered but is not persuasive because (1) the recitation "... assisting with backup and restore operations, ..." has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951); (2) amended claim 13, lines 4 and 8 recites "... communication mechanism" and in the original claim 13 the limitation recited "...communications mechanisms"; amended claim 12, line 4 recites connection to said [other member] said second" and this claim limitation should have the first "said" or the second "said"

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deleted; and claim 15, lines 1 & 2 on page 19 recites "identifying resources on a data storage devices to be used in order to transfer information through said storage device." and claim 15 should recite "identifying resources on a data storage device to be used in order to transfer information through said data storage device." If the claim limitation in claim 15 is meant to recite "identifying resources on a data storage device to be used in order to transfer information through said storage device" the claim limitation filed 11/26/02, Amendment C should recite the limitation in the following manner as an amendment "identifying resources on a data storage device to be used in order to transfer information through said [data] storage device"; and (3) Applicants' are arguing their amendment to claims 6 and 15, therefore, the argument is considered "moot."

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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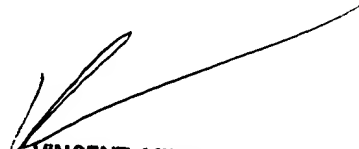
Inquiries

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 703-308-7064. The examiner can normally be reached on Monday-Thursday from 6:30 am -5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1038. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for Official communications and 703-746-5622 for Unofficial communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


E. Colbert
January 29, 2003


VINCENT MILLIN
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